

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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31589

FILE: B-216798.2 **DATE:** July 1, 1985
MATTER OF: Cincinnati Electronics Corporation

DIGEST:

Where request for technical proposals in first step of two-step formally advertised procurement required offerors to submit their proposed technical approach for item being procured, rejection of technical proposal, which simply referenced incomplete prior performance history of the firm under a separate contract for the same item, and which contained inadequate technical data for current evaluation, was proper.

Cincinnati Electronics Corporation protests the award of a contract for intercommunication sets under request for technical proposals (RFTP) No. M0027-84-R-0087, issued by the Marine Corps, Department of the Navy, as the first-step of a two-step formally advertised procurement. The technical proposal submitted by Cincinnati was rejected as technically unacceptable by the Marine Corps. Cincinnati has protested this determination to our Office. We deny the protest.

Background

In 1981, Cincinnati was awarded a contract by the Marine Corps for the design, development and production of these same intercommunication sets. Under the contract, Cincinnati also was responsible for providing a technical data package to enable the Marine Corps to procure these items competitively. Cincinnati has performed satisfactorily and has delivered in excess of 700 sets and associated technical data; deliveries of these items have continued throughout the course of the current procurement.

In July 1984, the Marine Corps invited prospective offerors to a pre-proposal conference where they were shown the current system manufactured by Cincinnati, as well as the drawings and specifications generated under Cincinnati's contract. The Marine Corps advised offerors that the current procurement would be for the purchase of

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equipment identical to that of Cincinnati. Further, the solicitation itself stated, in the statement of work, that the sets would be "substantially identical" to the models manufactured by Cincinnati.

When it received the solicitation, Cincinnati, as the incumbent and most qualified potential offeror, was reluctant to commit what it considered to be "unnecessary bid and proposal expense"^{1/} to a largely "theoretical" exercise in which the firm would formally outline its technical approach for the various steps necessary in the manufacturing process to achieve compliance with the technical specifications. Cincinnati representatives therefore decided merely to reference Cincinnati's current successful performance under its existing contract rather than presenting a detailed technical approach as expressly required by the solicitation.

In October 1984, Cincinnati states that it was orally advised by the contracting officer's representative and the government's acquisition project officer that this approach (merely referencing its past performance) was "the right [way] to go." Thus, for numerous technical requirements of the solicitation, Cincinnati's proposal, as submitted, merely stated as follows:

"Verification that these [requirements] will be satisfactory has been established through first article and production testing under [the current contract]. No changes affecting performance under these conditions are contemplated."

On December 13, 1984, after receipt of proposals and during discussions, Cincinnati alleges that the following transpired in a telephone conversation between Cincinnati and government representatives:

"[T]he government representatives informed Cincinnati . . . that its technical proposal was susceptible of being acceptable but that the company had

^{1/} Cincinnati states that it is essentially a captive supplier to the Department of Defense and that therefore its bid and proposal expenses are ultimately absorbed by the government through the application of its negotiated overhead rates.

relied too heavily on its performance under the existing . . . contract. When pressed for the specific areas of the proposal that were considered to be deficient, the government representatives identified only the maintainability sections of the proposal. The telephone conference concluded with specific assurances from the government representatives that all that would be required in order to make the proposal acceptable was the submission of a satisfactory maintainability plan."^{2/}

According to Cincinnati, subsequent oral communication with government representatives confirmed its belief that only the maintainability plan was required to make its proposal technically acceptable. Subsequently, Cincinnati hand-delivered a revision to its proposal which consisted solely of a revised maintainability plan and which made no changes concerning technical data. The Marine Corps thereafter rejected the proposal.

Contentions by Cincinnati

Cincinnati alleges that the Marine Corps failed to conduct meaningful discussions because it was orally led to believe both before and after receipt of proposals that such a presentation (relying on past performance) would be acceptable. Cincinnati insists that the firm was merely trying to save taxpayers' money since its proposal preparation expenses were reimbursable by the government in any event. Cincinnati also argues that since the goal of the first step was the qualification of offerors rather than competition between them, an elaborate proposal setting forth a precise methodology for achieving compliance would have been a needless and useless act by virtue of its incumbency. In short, Cincinnati believes that the Marine Corps had needlessly eliminated the most competent offeror without rational cause.

^{2/} The government disputes this account and maintains that the deficiencies pointed out as needing correction were not limited, at the conclusion of the telephone conversation, to the maintainability plan but also included, among other things, reliability, quality assurance and technical data.

Analysis

The crux of the dispute between the protester and the agency is Cincinnati's attempt to incorporate its current performance under another contract for the same item into its proposal rather than submitting a detailed technical proposal. In this respect, the RFTP stated:

"The technical proposal shall include proposed approach to performing all work required to satisfy the government's requirements. The management, engineering and any special testing techniques, phases, and/or tasks into which you plan to logically divide the program shall be discussed. The technical proposal shall not merely offer to comply with the government's requirements but shall prescribe the approach planned to be used. Statements which simply state that the offeror will meet the government's requirement in the following areas shall be reason for determining the firm's proposal to be unacceptable."

Cincinnati's proposal admittedly failed to conform to this requirement although Cincinnati argues that this requirement, under the circumstances, was senseless.

Generally, evaluation to determine the acceptability of a first-step technical proposal is concerned with the merits of the individual proposal, not the merits of the firm submitting the proposal. Overall technical acceptability and desirability, not responsibility, is what is being determined. Radiation Systems, Inc., B-211732, Oct. 11, 1983, 83-2 CPD ¶ 434. Thus, no matter how capable an offeror may in fact be, the firm must submit an adequately written proposal, if it is to be considered. Id. Nonetheless, we think there are circumstances where incorporation by reference is acceptable.

Thus a general proposal, incorporating by reference the specifics of an identical requirement on another contract should suffice as an adequately written proposal to the extent it covers completely the requirements of the

current solicitation. Where additional requirements not previously demonstrated are specified in the solicitation, however, a detailed technical proposal for these additional requirements must be submitted in accordance with the solicitation.

Here, Cincinnati's proposal did not expressly contain a technical approach. Thus if we assume that Cincinnati's proposal, as structured, could have been properly evaluated by examining technical data already submitted under its current contract and incorporated by reference in its technical proposal, there were nevertheless requirements that were not adequately addressed. The technical evaluators specifically found that:

"Cincinnati Electronics is unacceptable for the following reasons:

- (a) Heavy reliance on plans, tests, etc. approved under 1981 contract. No plans for updating.
- (b) No provisions for verifying the drawings against GFM radio.
- (c) No provisions for updating the data package.
- (d) Only addresses data as "will meet the requirements specified in the RFTP." No details are given on how this will be done. Previous experience indicates more detail is needed.

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"[I]n paragraphs 6.2.2.4, 6.3.2.4, and 6.4.2.4 of Cincinnati's] technical proposal, which address maintainability, it is stated that "The thrust of the program will be performed in accordance with MIL-STD-470A. The thrust of the program will be directed toward correction of deficiencies noted during the maintainability prediction/demonstration phases of the contract. Verification of the support

equipment requirements will be performed under the maintainability program." This does not state or prescribe a maintainability plan, but rather, offers to comply with the government's requirements. In addition, the deficiencies hinted at in the paragraph have not been identified nor have the proposed methods of correcting those deficiencies."

In addition to deviating from the solicitation's express instructions, Cincinnati thus failed to present in its proposal a current technical approach or updated technical data. The Marine Corps states that Cincinnati, under its current contract, was required to provide a complete reprourement technical data package consisting of "Level 3" drawings and a final specification in accordance with certain military standards. While the final specifications were required to be furnished by March 1984, the Marine Corps states as follows:

"[N]otwithstanding the efforts of the Marine Corps contracts and technical personnel to ensure timely delivery of these data items, Cincinnati Electronics has failed to comply with its contractual obligations. The Marine Corps has received only a draft specification; and final specification that meets the requirements . . . has not been delivered . . . The specification . . . received [has] been reviewed by government technical personnel and found to be neither complete nor accurate. Due to Cincinnati Electronics' untimely and unsatisfactory performance on these data items . . . the Marine Corps was unwilling to accept the contractor's blanket assurance that it would meet the data requirements stated in the RFTP."^{3/}

^{3/} Cincinnati contends that any delay in submitting these requirements is due to the Marine Corps' delay in granting final approval for these data items.

The Marine Corps considers Cincinnati's proposal as a "little more than a blanket offer to comply with the evaluated requirements of the solicitation." We think it reasonable to conclude that Cincinnati's proposal, at the very least, needed updating so that it could be properly evaluated on a current basis. It is admitted that technical deficiencies, except for the maintainability plan, were never corrected by Cincinnati in its proposal. Thus, without further correction of these areas, including technical data, Cincinnati's proposal was unacceptable whether or not its proposal was adequately structured by incorporating past contractual data. Consequently, without further data, such a proposal could not have been properly accepted.

Concerning the discussions that took place after receipt of proposals, we note that the agency insists that specific deficiencies were pointed out to Cincinnati in the areas of technical data, reliability, maintainability and quality assurance. Further, the Marine Corp's rejection letter stated that Cincinnati's proposal "remained deficient . . . because technical data requirements were inadequately discussed." The agency denies having pointed out that only the "maintainability plan" required correction. Thus, in the final analysis, we are left with conflicting statements by the agency and the protester as to what substantive deficiencies were pointed out by the Marine Corps as needing correction. The Marine Corps' contention that the deficiencies discussed included inadequate technical data is supported by the actual evaluation documents which identified this area as a deficiency in Cincinnati's proposal.

Accordingly, the protest is denied.

for Seymour E. Van
Harry R. Van Cleve
General Counsel